

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

15 Cr. 457 (KPF)

5 BRANDON LISI,

6 Defendant.

Plea (by video)

7 -----x
8 New York, N.Y.
9 April 3, 2017
9:35 a.m.

10 Before:

11 HON. KATHERINE POLK FAILLA,

12 District Judge

13 APPEARANCES

14 JOON H. KIM
15 Acting United States Attorney for the
16 Southern District of New York
17 KATHERINE REILLY
18 NOAH SOLOWIEJCZYK
Assistant United States Attorneys

19 LISA SCOLARI
Attorney for Defendant

1 (Case called)

2 MS. REILLY: Good morning, your Honor, Katherine
3 Reilly and Noah Solowiejczyk for the government.

4 MS. SCOLARI: Good morning, your Honor, Lisa Scolari
5 for Mr. Lisi.

6 THE COURT: Good morning.

7 Mr. Lisi. I can see you. Can you see me this
8 morning, sir?

9 THE DEFENDANT: Yes, your Honor. Good morning.

10 THE COURT: Good morning, sir. Sir, if at any point
11 you have any difficulty hearing or understanding what's going
12 on, I would ask you please to perhaps just raise your hand and
13 we will know that there is something going on.

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: At the moment there are no problems
16 hearing me?

17 THE DEFENDANT: No. There is a little bit of a delay,
18 your Honor, but I can hear you just fine.

19 THE COURT: I will keep that in mind. I have no delay
20 at this end, but I will keep in mind that there is one at your
21 end.

22 Sir, at this time do you have in front of you a copy
23 of the indictment in this case and a copy of a letter to
24 Ms. Scolari that is dated the 28th of March?

25 THE DEFENDANT: I do, your Honor.

1 THE COURT: Ms. Scolari and I will talk for just a
2 moment and then I am going to talk back with you.

3 MS. SCOLARI: May I make a request before we go
4 further?

5 THE COURT: Of course.

6 MS. SCOLARI: As your Honor knows, the camera only
7 shows the bench, and I had indicated to Mr. Lisi that we can
8 put on the record everyone who is in the courtroom since he
9 can't see. I think it would be appropriate to let him know
10 that.

11 THE COURT: At this time, Mr. Lisi, there are the two
12 prosecutors who introduced themselves, Mr. Solowiejczyk and
13 Ms. Reilly; Ms. Scolari is here; Mr. Greenblum, the court
14 reporter, is here; Mr. Lopez, my deputy, is here; I am here; my
15 law clerk, Mr. Bertoldi, is here; and there is a gentleman in
16 the back of the courtroom.

17 MR. SMYTHE: Special Agent Smythe.

18 THE COURT: And he is going to step up and sit with
19 the prosecutors right now. That's who we have got in the
20 courtroom right now.

21 Mr. Lisi, you cannot see Ms. Scolari, but she is here
22 and I do understand, sir, that if at any time you wish to speak
23 with her, there are arrangements that we can make to have a
24 phone call that you could place to the robing room that's next
25 to this courtroom and you would be able to have a private

1 conversation with her.

2 Mr. Lisi, it is my understanding, sir, that you wish
3 to plead guilty this morning to Count One of the indictment
4 that's in front of you right now and it has the docket number
5 15 Cr. 457. Is that correct, sir?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Mr. Lisi, before I can accept your plea, I
8 need to ask you a series of questions and they are designed to
9 establish different things. What I'd first like to do is make
10 sure that you're competent to enter a plea of guilty, that you
11 are not under the influence of anything medicinal, emotional
12 that would keep you from seeing or hearing or understanding
13 what's going on this morning. I would also like to make sure
14 that you know the rights that you have and the rights that you
15 would be waiving by entering a plea of guilty. I'd like to
16 talk to you about the charge in this case to which you propose
17 to plead guilty, the elements of that charge, and the penalties
18 that are associated with that charge. Finally, I would just
19 like to talk to you and understand what it is you did that
20 makes you believe that you are guilty of this offense.

21 Sir, I want to ask you some background questions
22 first, but I will just say that the most important thing this
23 morning is that you understand what's going on. As I mentioned
24 earlier, if there is anything that is unclear, either because
25 of technological issues or because of the nature of the

1 question I'm asking, please let me know. All right, sir?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Sir, if I don't hear from you I will
4 understand that you understand what's going on.

5 Let me begin with this question, sir. It is my
6 understanding that for a number of reasons you're at FCI Fort
7 Dix this morning, sir?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: In speaking with your counsel I understand
10 that for various reasons, including medical reasons, it is your
11 preference to remain at FCI Fort Dix and to enter your guilty
12 plea from there by video conferencing. Is that correct, sir?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: And do you understand, sir, that in other
15 circumstances, if you wanted to, you would have a right to be
16 present here in the courtroom with me now and we could make
17 arrangements for your transportation to the Southern District
18 of New York. Are you aware of that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: And so have you, in consultation with your
21 counsel, decided to waive that right to be present this
22 morning?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Again, I have spoken with your counsel
25 about various medical and other issues. It would be my thought

1 that we not put those on the record, but if you'd like me to we
2 can.

3 THE DEFENDANT: That would be up to the Court, your
4 Honor. I'm fine either way.

5 THE COURT: Ms. Scolari, have you had enough of an
6 opportunity to speak to Mr. Lisi about his right to be present
7 here this morning in open court?

8 MS. SCOLARI: I have, your Honor.

9 THE COURT: Upon consultation with him and for the
10 reasons that you've discussed with me earlier, it is his
11 preference, it is his decision to waive that right to be
12 present here this morning.

13 MS. SCOLARI: Yes, your Honor. It is at his request
14 that we are doing this.

15 THE COURT: Then I will consider the matter waived.

16 Mr. Lopez, can I ask you, please, to administer the
17 oath to Mr. Lisi.

18 THE DEPUTY CLERK: Yes, your Honor.

19 (Defendant sworn)

20 THE DEPUTY CLERK: Please state your name for the
21 record.

22 THE DEFENDANT: Brandon Lisi.

23 THE COURT: Mr. Lisi, the significance of my deputy
24 placing you under oath is that you are now under oath and any
25 statements that you make that are false could subject you to

1 the additional penalty of perjury. Do you understand that,
2 sir?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Mr. Lisi, how old are you?

5 THE DEFENDANT: 43 years of age, your Honor.

6 THE COURT: How far did you go in school, sir?

7 THE DEFENDANT: I have a juris doctorate. It's a law
8 degree.

9 THE COURT: Did you attend school in the New York area
10 or somewhere else?

11 THE DEFENDANT: The highest level of education was
12 between Miami and the New York area.

13 THE COURT: Sir, have you ever been treated or
14 hospitalized for any form of mental illness?

15 THE DEFENDANT: No, your Honor.

16 THE COURT: And are you now under the care of a doctor
17 or a psychiatrist?

18 THE DEFENDANT: I am under the care of a doctor, your
19 Honor.

20 THE COURT: And I have spoken with your counsel about
21 the medical care that you are receiving. Are you currently,
22 sir, receiving any medications attendant to those medical
23 issues?

24 THE DEFENDANT: I am, your Honor.

25 THE COURT: And do those medications cause you to have

1 any difficulty seeing or hearing or understanding what's going
2 on this morning?

3 THE DEFENDANT: No, your Honor.

4 THE COURT: Would you mind letting me know what
5 medications have been prescribed for you, sir.

6 THE DEFENDANT: Yes, your Honor. I'm on the
7 following -- I have the following medications that I take on a
8 daily basis, sometimes more than once a day. I'll try and
9 sound them out phonetically: Amlodipine; Lisinopril;
10 hydrochlorizide; montelukast sodium; tiotropium bromide,
11 duloxetine HCl, ibuprofen, 800 milligrams; budesonide
12 formoterol, chlorhexidine gluconate; and Albuterol, your Honor.

13 THE COURT: And none of these, either alone or in
14 combination, would cause you to feel fuzzy or have any
15 difficulties understanding what's going on today, sir?

16 THE DEFENDANT: No, your Honor. Two of them are pain
17 medications, but nothing that should impact today's proceedings
18 at all, your Honor.

19 THE COURT: Sir, other than the medical conditions for
20 which you've been prescribed, these substances, are you under
21 medical treatment for anything else? Are you receiving any
22 other medical care, sir?

23 THE DEFENDANT: Other than for these -- other than
24 that these medications are directed for?

25 THE COURT: Yes, sir.

1 THE DEFENDANT: No.

2 THE COURT: Are you receiving any psychological or
3 psychiatric services at this time, sir?

4 THE DEFENDANT: No, your Honor.

5 THE COURT: And I believe I know the answer to this.
6 Have you consumed any alcoholic beverages in the past two days,
7 sir?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: I did not think so, sir.

10 Mr. Lisi, is your mind clear today?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Do you understand what is happening?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Ms. Scolari, have you discussed this
15 matter fully with Mr. Lisi?

16 MS. SCOLARI: I have, your Honor.

17 THE COURT: Do you believe he understands the rights
18 that he would be waiving by pleading guilty?

19 MS. SCOLARI: I do.

20 THE COURT: Do you believe he understands the nature
21 of these proceedings this morning?

22 MS. SCOLARI: Yes, I do.

23 THE COURT: Do you have any doubt as to his competence
24 to plead guilty?

25 MS. SCOLARI: I do not.

1 THE COURT: Ms. Reilly, do you have any doubt as to
2 Mr. Lisi's competence to plead guilty?

3 MS. REILLY: No, your Honor.

4 THE COURT: Mr. Lisi, based on your responses to my
5 questions, which would include both the actual words that you
6 used and my observations of your demeanor here on the video,
7 and based as well on the conversations that I've just had with
8 your attorney and with the attorney for government, I find that
9 you are fully competent to enter a knowing and informed plea of
10 guilty.

11 Sir, I am going to ask you please to direct your
12 attention to the indictment in this case. Do you have that in
13 front of you?

14 THE DEFENDANT: I do, your Honor.

15 THE COURT: I know I have asked you questions about it
16 previously, but I do want to reask a few of them. Have you at
17 any point prior to today read this indictment, sir?

18 THE DEFENDANT: I have, your Honor.

19 THE COURT: And, in particular, have you read Count
20 One of the indictment, which is the count to which you propose
21 to plead guilty?

22 THE DEFENDANT: I have, your Honor.

23 THE COURT: Have you had a sufficient opportunity to
24 speak with Ms. Scolari about Count One, the charge to which you
25 intend to plead guilty, and any possible defenses that you

1 might have to that charge?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: And has she discussed with you the
4 consequences of entering a plea of guilty?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Are you satisfied with her representation
7 of you in this matter?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Mr. Lisi, what I'd like to do now is talk
10 to you about certain constitutional rights that you have and
11 that you would be giving up by entering a plea of guilty. As I
12 mentioned earlier, if there is anything that is unclear to you,
13 please let me know and either your attorney or I will take a
14 moment to speak to you about the right in question.

15 Let me begin in this manner. Under the Constitution
16 and laws of the United States, you have a right to plead not
17 guilty or to continue with your plea of not guilty to Count One
18 of the indictment. Do you understand that, sir?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: And if you continued with your plea of not
21 guilty, you would be entitled to a speedy and public trial by a
22 jury on the charges contained in this indictment. Do you
23 understand, sir?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: At a trial you would be presumed to be

1 innocent and the government would be required to prove you
2 guilty by competent evidence beyond a reasonable doubt before
3 you could be found guilty. Do you understand that, sir?

4 THE DEFENDANT: I do, your Honor.

5 THE COURT: A jury of 12 people would have to agree
6 unanimously that you were guilty and you would not have to
7 prove that you were innocent if you were to proceed to trial.
8 Do you understand that, sir?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: At a trial and at every stage of your
11 prosecution you are entitled to the assistance of an attorney.
12 And if at any point you could not afford an attorney, one would
13 be appointed for you at public expense and free of cost to you
14 in order to represent you. Do you understand that?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: If there were a trial in this case, the
17 witnesses for the government would have to come to open court
18 and testify in your presence and your attorney could
19 cross-examine the witnesses for the government, she could
20 object to evidence offered by the government, she could offer
21 evidence on your own behalf if you wanted her to. You would
22 also have the right to have subpoenas or other documents or
23 process used in order to compel witnesses to testify in your
24 defense. Do you understand that, sir?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: And if there were a trial in this case,
2 Mr. Lisi, you would have the right to testify if you wanted to
3 do so, and you would have the right not to testify if you
4 wanted not to do so. And if you decided not to testify, no
5 one, including the jury, could draw any inference or suggestion
6 of guilt from your decision not to testify. Do you understand
7 that, sir?

8 THE DEFENDANT: I do, your Honor.

9 THE COURT: Mr. Lisi, another consequence of entering
10 a plea of guilty is that you waive your right to seek
11 suppression or exclusion of the government's evidence against
12 you. Are you aware of that, sir?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Have you had enough of an opportunity to
15 speak with Ms. Scolari about whether there is a basis for you
16 to seek suppression or exclusion of part or all of the
17 government's evidence against you?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: And do you also understand, sir, that if
20 you were convicted at a trial, you would have the right to
21 appeal from the jury's verdict?

22 THE DEFENDANT: I do, your Honor.

23 THE COURT: Even now, Mr. Lisi, as you are entering
24 this guilty plea, you have the right to change your mind and to
25 enter a plea of not guilty, which in this case means continuing

1 with the plea of not guilty that you have made to the charges
2 in the indictment. Do you understand that, sir?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: If you plead guilty and if I accept your
5 guilty plea, you will give up your right to trial and the other
6 rights that I have just been discussing with you other than
7 your right to counsel. You have the right to counsel whether
8 you plead guilty or go to trial. But if you plead guilty and
9 if I accept your guilty plea, there will be no trial and I will
10 enter a judgment of guilty on Count One of the indictment and
11 I'll sentence you at a later date based on the information that
12 I receive from you today, information that I receive from the
13 probation office in what's called the presentence investigation
14 report, and information that I receive from you and your
15 attorney and from the attorneys for the government in
16 connection with sentencing. If you plead guilty and if I
17 accept your guilty plea, there would be no appeal on the issue
18 of whether the government could use the evidence that it has
19 against you and there would be no appeal on the issue of
20 whether you did in fact commit the offense charged in Count
21 One. Do you understand that, sir?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Mr. Lisi, if you plead guilty, there is a
24 degree to which you will have to give up your right not to
25 incriminate yourself and that is because later on in this

1 proceeding I will be asking you some questions to confirm that
2 you are in fact guilty of the offense charged in Count One and
3 you will have to admit and acknowledge your guilt of that
4 offense. Do you understand that, sir?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Mr. Lisi, do you understand each of the
7 rights that I've been discussing with you for the past few
8 minutes?

9 THE DEFENDANT: I do, your Honor.

10 THE COURT: And would you like me to provide any
11 additional or clarifying information about any of those rights?

12 THE DEFENDANT: No, your Honor.

13 THE COURT: Mr. Lisi, are you willing to give up your
14 right to a trial and the other rights that I've been discussing
15 with you and enter a plea of guilty to Count One of the
16 indictment?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Let's turn to the count itself. You are
19 charged in this Count One with conspiring to commit wire fraud
20 in violation of Title 18 of the United States Code, Section
21 1349.

22 Ms. Reilly or Mr. Solowiejczyk, could you please state
23 the elements of this offense.

24 MS. REILLY: Certainly, your Honor. As you said,
25 Count One charges a conspiracy to commit wire fraud. That

1 offense has two elements: First, the existence of the
2 conspiracy charged; that is, an agreement or understanding
3 between at least two people to violate the laws of the United
4 States; here, the laws that make it a crime to commit the
5 offense of wire fraud; and, second, that the defendant
6 knowingly and willfully became a member of a conspiracy.

7 The object of the conspiracy charged in Count One, as
8 I said, is wire fraud, which is codified in Title 18, United
9 States Code, Section 1343. That crime has three elements:
10 First, that there was a scheme or artifice to defraud or obtain
11 money or property by materially false and fraudulent pretenses,
12 representations, or promises; second, that the defendant
13 knowingly and willfully participated in that scheme or artifice
14 to defraud with knowledge of its fraudulent nature and with
15 specific intent to defraud; and, third, that in the execution
16 of that scheme the defendant used or caused use of interstate
17 wires.

18 THE COURT: Mr. Lisi, were you able to hear the
19 prosecutor?

20 THE DEFENDANT: I was, your Honor.

21 THE COURT: Do you understand, sir, that if you were
22 to proceed to trial on Count One, those are the elements of the
23 offense that the government would have to prove beyond a
24 reasonable doubt?

25 THE DEFENDANT: I do, your Honor.

1 THE COURT: Ms. Reilly, is this a situation in which
2 there is venue in the Southern District of New York or was
3 venue waived?

4 MS. REILLY: There is venue in the Southern District,
5 your Honor.

6 THE COURT: Mr. Lisi, just to be clear, what I mean by
7 that is, the government would also have to prove by a lesser
8 standard, a preponderance of the evidence standard, that some
9 piece of that conduct took place in the Southern District of
10 New York, which would include Manhattan, the Bronx, Westchester
11 County, and certain counties north of that. Do you understand
12 that, sir?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Let me then turn to a different topic,
15 which is the maximum possible penalties that are associated
16 with the offense charged in Count One. And I am deliberately
17 using the term maximum to connote the most that could possibly
18 be imposed. It doesn't mean that's necessarily what you are
19 going to receive, but I do want you to understand that by
20 pleading guilty you are exposing yourself to receiving any
21 combination of punishments up to the statutory maximum terms
22 that I am about to describe. Do you understand that, sir?

23 THE DEFENDANT: I do, your Honor.

24 THE COURT: Let me first talk to you about possible
25 restrictions on your liberty. The maximum term of imprisonment

1 for Count One is 20 years' imprisonment. Do you understand
2 that, sir?

3 THE DEFENDANT: I do, your Honor.

4 THE COURT: And that could be followed by a term of up
5 to three years of supervised release. When I use the term
6 supervised release, what I mean is, a period of time where you
7 would be subject to supervision by the United States Probation
8 Office. There would be terms and conditions of supervised
9 release that you would have to follow. And if you were to
10 violate those terms and conditions, the possibility exists that
11 you could be returned to prison without a jury trial to serve
12 additional time. If that were to take place, you would not
13 receive credit for time that you had served in prison on any
14 sentence of imprisonment, and you would not receive credit for
15 any time that you had spent on supervised release without
16 incident. Do you understand that, sir?

17 THE DEFENDANT: I do, your Honor.

18 THE COURT: Do you also understand that there is no
19 parole in the federal system and so if you are sentenced to a
20 term of imprisonment, you would not be released early on
21 parole. There is an opportunity to earn credit for good
22 behavior, but even then you'd have to serve at least 85 percent
23 of the term, approximately, of the term to which you are
24 sentenced. Do you understand that?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: Let me talk about certain financial
2 penalties that are also associated with this offense. The
3 maximum allowable fine in this case is the greatest of these
4 three things: Either \$250,000 or twice the gross pecuniary
5 gain derived from the offense, or twice the gross pecuniary
6 loss to persons other than yourself, whichever is the greatest.
7 I can order restitution to any person or entity injured as a
8 result of your criminal conduct. I can order you to forfeit
9 property derived from the offense or used to facilitate the
10 offense, and I must order a mandatory special assessment of
11 \$100 per count of conviction. Do you understand, sir, that
12 these are the maximum possible penalties that are associated
13 with the Count One offense?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Are you a United States citizen, sir?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: I ask that because some folks who plead
18 guilty before me are not, and a guilty plea can have adverse
19 immigration consequences that I won't discuss with you further.

20 Do you understand, instead, sir, that as a result of
21 your guilty plea there are certain civil rights that you may
22 lose or that you may not be able to obtain in the future,
23 including the right to vote, the right to hold public office,
24 the right to serve on a jury, and the right to possess a
25 firearm?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Sir, I appreciate that you're currently
3 serving a sentence for another offense. In terms of pending
4 prosecutions, is this case the only pending case that you have
5 outstanding?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you understand, sir, that there is a
8 possibility that the sentence that I impose in this case could
9 be consecutive to the sentence that you are currently serving
10 that brings you to Fort Dix?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Sir, do you have familiarity with the
13 United States Sentencing Guidelines? When I use the term
14 guidelines or sentencing guidelines, do you know what I'm
15 talking about?

16 THE DEFENDANT: I do, your Honor.

17 THE COURT: And have you had enough of an opportunity
18 to speak with Ms. Scolari about the process of sentencing in
19 this case?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Have you had an opportunity to speak with
22 Ms. Scolari about the guidelines and how they might apply to
23 your case?

24 THE DEFENDANT: I have, your Honor.

25 THE COURT: The reason I'm asking that, sir, is the

1 following. I want to make sure that you understand that if
2 your attorney or anyone else has attempted to predict for you
3 what your ultimate sentence will be, their prediction may be
4 wrong. No one involved in this plea this morning, not your
5 attorney, not the government's attorneys, nor anyone else, can
6 give you any assurance of what your ultimate sentence will be.
7 I expect that I will be the judge sentencing you and I need to
8 have much more information than I currently do. I'll need to
9 hear from you this morning, I'll need to hear from the
10 probation office in the presentence investigation report, and
11 I'll need to hear from you and your attorney and from the
12 attorneys for the government in connection with sentencing.

13 Do you understand, sir, that today no one can assure
14 you or give you any assurance as to what your ultimate sentence
15 will be?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: And do you also understand, sir, that even
18 if your sentence is different from what your attorney or anyone
19 else might have told you it might be, even if it is different
20 from what you expect it or hoped for, and even if it is
21 different from what's contained in any agreement you might have
22 with the government, you would still be bound by your guilty
23 plea and you would not be permitted to withdraw your plea of
24 guilty based merely on dissatisfaction with the sentence
25 received in this case. Do you understand that, sir?

1 THE DEFENDANT: Your Honor, may I take a moment to
2 speak with my counsel. Is that possible? I'm sorry for
3 interrupting the proceedings.

4 THE COURT: Not at all, sir. There is no problem at
5 all. Let's do that. I think what's going to happen is,
6 you'll place a phone call to us. We have been given a number
7 in which to call us. Do you have that number, sir?

8 THE DEFENDANT: We do, your Honor.

9 THE COURT: We will ask you, please, to turn off the
10 microphone at your end when you begin the call so that we are
11 not hearing the nature of the call. All right?

12 THE DEFENDANT: OK. Thank you, your Honor.

13 (Recess)

14 THE COURT: Mr. Lisi, did you have enough of an
15 opportunity to speak with Ms. Scolari about the issues that
16 were causing you concern?

17 THE DEFENDANT: I did, your Honor. Again, I'm sorry
18 for interrupting the proceedings. I was able to speak with
19 her, though.

20 THE COURT: Sir, you can interrupt the proceedings as
21 many times as you want. Again, this is to make sure you
22 understand what's going on.

23 MS. SCOLARI: Judge, can I just say, I'm back in the
24 courtroom with everybody, Mr. Lisi.

25 THE COURT: Mr. Lisi, I'm sorry, because you cannot

1 see this, Ms. Scolari walked in at the same time you were
2 walking to your seat. She is now seated back in the courtroom
3 with the rest of us.

4 THE DEFENDANT: Thank you, your Honor.

5 THE COURT: Sir, the last question I asked you I am
6 going to reask because I want to make sure because we are at
7 the same place. That is, you do understand, sir, that if the
8 sentence you receive is ultimately not the sentence that you
9 thought you were receiving, that would not be a basis, that
10 dissatisfaction with your sentence would not be a basis for
11 withdrawing your plea of guilty. Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Sir, I understand that there is a written
14 plea agreement that is entered into between you and your
15 attorney and the attorneys for the government. In furtherance
16 of that I have been given a document that I've marked Court
17 Exhibit 1. It is a March 28, 2017 letter from Ms. Reilly and
18 Mr. Solowiejczyk and Mr. Kim to Ms. Scolari. Do you have a
19 copy of that letter in front of you, sir?

20 THE DEFENDANT: I do, your Honor.

21 THE COURT: Sir, the copy that I have has six pages to
22 it. Can I ask you, please, to turn to the last page of your
23 document and tell me if on yours the sixth page is the last
24 page of your document?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: There are four signatures on the copy that
2 I have in front of me. Do you have four signatures on the copy
3 in front of you?

4 THE DEFENDANT: No, I do not, your Honor.

5 MS. REILLY: Your Honor, if I might, because of the
6 logistics of the setup, Mr. Lisi signed the original plea
7 agreement you have in front of you and then only then did the
8 government sign, both Mr. Kim and I. So Mr. Lisi signed in
9 person, but doesn't have a fully signed executed copy.

10 THE COURT: I understand that now.

11 Ms. Scolari, how would you like to address this?
12 Would you like to come up here and see the document? Have you
13 seen it?

14 MS. SCOLARI: I have seen it, your Honor, and I had
15 indicated to Mr. Lisi that if it was possible we would hold the
16 document up to show him the signatures. I don't know if it
17 will be clear enough for him to see, but perhaps the Court
18 could indicate that the signatures are there.

19 THE COURT: Mr. Lopez, can I ask you to walk towards
20 the camera and see if you can show this document.

21 Mr. Lisi, do you see the document?

22 THE DEFENDANT: Your Honor, I see a piece of paper
23 with some writing on it, but it's not a hundred percent clear.
24 If my attorney has seen the signatures, you know, obviously, I
25 trust my attorney to tell me that she has seen the signatures.

1 MS. SCOLARI: I have seen them.

2 THE COURT: Mr. Lisi, let me tell you the signatures
3 that I have in front of me. I have Ms. Reilly as one
4 signatory, I have Mr. Kim, or someone signing on his behalf, as
5 the cochief of the complex frauds unit, and then I have two
6 signatures at the bottom. I believe one of them is
7 Ms. Scolari's and one of them is yours. Am I correct that you
8 signed a version of this plea agreement?

9 THE DEFENDANT: I did, your Honor.

10 MS. SCOLARI: Judge, actually, he signed that actual
11 agreement. I brought it back from Fort Dix. That's his
12 original and my original signatures.

13 THE COURT: The record will now reflect that.

14 Mr. Lisi, the document that I have indicates that you
15 signed this agreement on Friday, the 31st of March. Is that
16 correct?

17 THE DEFENDANT: That's correct, your Honor.

18 THE COURT: Before you signed this agreement, did you
19 read it, sir?

20 THE DEFENDANT: I have, your Honor.

21 THE COURT: Did you understand it?

22 THE DEFENDANT: I did.

23 THE COURT: Did you understand it?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: And did you have enough of an opportunity

1 to discuss this document with Ms. Scolari before you signed it?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: I would like to just review a couple of
4 the provisions in the agreement with you, sir. What I would
5 ask, please, is, can I ask you to turn to page 2 of the
6 agreement and let me know when you've arrived there.

7 THE DEFENDANT: I'm there, your Honor.

8 THE COURT: Sir, the very first paragraph on that page
9 indicates that as part of your plea in this case you are
10 admitting to the forfeiture allegation that is associated with
11 Count One of the indictment and in so doing you are agreeing to
12 forfeit to the United States property that constitutes or is
13 derived from proceeds traceable to the offense. Am I correct,
14 sir, are you agreeing to forfeit the proceeds of the offense in
15 this case? This is the very first paragraph on page 2.

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: So do I understand that you are admitting
18 to the forfeiture allegation that is contained at the back of
19 the indictment in this case?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Sir, in the next paragraph I'm
22 understanding that what you are agreeing to do is, you are
23 agreeing to make restitution in an amount that I would order at
24 some later date based on the information that I would need to
25 figure out whether there are individuals or entities who have

1 been injured as a result of your conduct. Are you in fact
2 agreeing to make restitution?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: And do you also understand that the
5 agreement to make restitution would be a condition of
6 supervised release in this case?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: And, sir, on the remainder of page 2, and
9 then carrying over on to page 3, what I understand this to be
10 are a series of guidelines stipulations. You and your attorney
11 and the attorneys for the government are agreeing that the
12 sentencing guidelines apply to your case in a particular
13 manner. Is that your understanding as well, sir?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: So, the information about the guidelines
16 on pages 2 and 3 is what you and your attorney and the
17 attorneys for the government believe to be the manner in which
18 the guidelines apply to your case. Is that correct, sir?

19 THE DEFENDANT: I'm sorry. Can you repeat that
20 question.

21 THE COURT: No. I'll ask the question better. Is it
22 my understanding that the stipulations here on pages 2 and 3 of
23 the agreement represent how you and your attorney and the
24 attorneys for the government believe the guidelines apply to
25 your particular case. Is that correct?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Sir, I want you to understand that I'm not
3 a signatory to this plea agreement and I have an independent
4 obligation to calculate the guidelines. I will do that in
5 connection with your sentencing. I don't know that I will come
6 up with any different numbers, but I did want you to understand
7 that I am not bound by these stipulations. Do you understand
8 that, sir?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: And do you understand that if I come up
11 with a different range than the range that is contained in this
12 agreement, that my coming up with a different range would not
13 be a basis for you to withdraw your guilty plea in this case.
14 Do you understand that, sir?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Sir, could I ask you, please, to turn to
17 page 4 of the agreement and let me know when you've gotten
18 there.

19 THE DEFENDANT: I'm there, your Honor.

20 THE COURT: Sir, if you look at the very last
21 paragraph on this page, and it carries over onto page 5, what I
22 understand this paragraph to be is a series of waivers that you
23 and the government are entering into with respect to your
24 sentence. And in each case you and the government are agreeing
25 that if you are sentenced in a particular way, you would be

1 giving up your right to appeal or challenge that component of
2 your sentence. Is that your understanding of what this
3 paragraph is as well?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Let me talk to you about your waiver, sir,
6 since I've been speaking with you this morning. I am
7 understanding, in the first instance, that you are waiving or
8 giving up your right to appeal or otherwise challenge a
9 sentence of imprisonment that is within or below the stipulated
10 guidelines range of 51 to 63 months. If I were to sentence you
11 to a term of 63 months' imprisonment or something less than
12 that, you would be giving up your right to appeal or otherwise
13 challenge that piece of your sentence. Is that correct, sir?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: I also understand, and I see this on the
16 next page, that you are agreeing not to appeal any term of
17 supervised release that is less than or equal to the statutory
18 maximum of three years. So if I were to sentence you to a term
19 of supervised release of three years or something less than
20 that, you are agreeing not to appeal that piece of your
21 sentence. Is that correct, sir?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: And I also understand that you are
24 agreeing not to appeal any fine that is less than or equal to
25 \$75,000. If I were to impose a fine of \$75,000 or something

1 less than that, you are agreeing not to appeal that piece of
2 your sentence. Is that correct, sir?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: And I did note, I should have mentioned
5 this earlier, I see in this paragraph as well that with respect
6 to the term of imprisonment you are agreeing that the waiver I
7 discussed with you a few moments ago, which is that you would
8 not appeal any term of imprisonment that was 63 months or
9 below, that would apply whether or not I ordered that term of
10 imprisonment to run consecutively to or concurrently with the
11 undischarged portion of imprisonment that you are now serving.
12 Do you understand that, sir?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Sir, does this plea agreement contain the
15 complete and total understanding of your plea agreement with
16 the government?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Has anything been left out, sir, to the
19 best of your knowledge?

20 THE DEFENDANT: Not to the best of my knowledge, no,
21 your Honor.

22 THE COURT: Other than what is contained in this
23 agreement, has anyone made you any promise or offered you any
24 form of inducement in order to get you either to plead guilty
25 or to sign this agreement that I have before me this morning?

1 THE DEFENDANT: No, your Honor.

2 THE COURT: Has anyone threatened you or forced you to
3 plead guilty or to sign this plea agreement?

4 THE DEFENDANT: No, your Honor.

5 THE COURT: Has anyone made you any promise as to what
6 your ultimate sentence will be?

7 THE DEFENDANT: No, your Honor.

8 THE COURT: Sir, could you please tell me in your own
9 words what you did that makes you believe that you are guilty
10 of Count One of the indictment.

11 THE DEFENDANT: Yes, your Honor. Between 2009 and
12 2014, I agreed with others to cause an individual to authorize
13 disbursement of money based on what I knew to be false
14 information. The money was transferred from one bank to
15 another.

16 THE COURT: Sir, did either of these banks or did this
17 transaction take place in the Southern District of New York?

18 MS. SCOLARI: Your Honor, the government may have to
19 add to that. I don't know if Mr. Lisi can answer the venue
20 issue.

21 THE COURT: Mr. Lisi, let me just repeat to you what
22 Ms. Scolari just said. One of the issues that I must address
23 is whether or not venue has been met. I don't know if you have
24 an awareness of any conduct taking place in Manhattan or
25 Westchester or the Bronx. Perhaps what I'll do, instead, is, I

1 will get the government's proffer regarding venue in this case.

2 Is that all right, sir?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Ms. Reilly.

5 MS. REILLY: Certainly, your Honor. The government
6 proffers that if we were to proceed to trial in this matter the
7 government would introduce evidence that certain actions in
8 furtherance of the conspiracy took place in the Southern
9 District of New York; specifically, that at least one or more
10 victims of the conspiracy caused money to be transferred from a
11 bank located in Manhattan and that a coconspirator and a victim
12 of the conspiracy met with an attorney seeking to further the
13 objects of the conspiracy at an office in Manhattan.

14 THE COURT: Mr. Lisi, were you able to hear the
15 prosecutor a moment ago?

16 THE DEFENDANT: For the most part, your Honor, yes.

17 THE COURT: What she indicated to me was that the
18 transfer from one bank to another involved a bank that was
19 located in Manhattan and that there was as well a meeting with
20 both a coconspirator and a victim of the conspiracy that took
21 place at an office in Manhattan. That would seem to satisfy
22 the venue obligation. Do you agree, sir?

23 THE DEFENDANT: OK, your Honor.

24 THE COURT: I don't want you to just agree with me.

25 THE DEFENDANT: Yes, your Honor.

1 MS. SCOLARI: Your Honor, I guess I would just
2 reiterate that Mr. Lisi doesn't know. That's why we have asked
3 the government to proffer. I certainly don't object to what
4 the government has said.

5 THE COURT: Mr. Lisi, were you able to hear
6 Ms. Scolari a moment ago?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Ms. Scolari, do you know of any valid
9 defense that would prevail at trial or any reason why your
10 client should not be permitted to plead guilty?

11 MS. SCOLARI: I do not, your Honor.

12 THE COURT: Mr. Lisi, when I was hearing from you a
13 moment ago I saw that you had some notes written down. Are
14 these your notes to aid you in speaking with me this morning?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: The issue that concerned me, sir, I want
17 to make sure you are telling me your words and not someone
18 else's. These are your words. Yes, sir?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Mr. Lisi, when you agreed with this
21 person, the person with whom you had the agreement to cause
22 someone else to authorize disbursements, the person with whom
23 you had the agreement, this person wasn't a government agent or
24 a law enforcement officer, right? They were a civilian,
25 correct?

1 THE DEFENDANT: To the best of my knowledge, your
2 Honor.

3 THE COURT: I understand that. And when you agreed
4 with this person to cause someone else to authorize
5 disbursements based on false information, did you understand
6 that what you were doing was wrong and illegal?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Ms. Reilly, is there an additional
9 question that you would like me to ask?

10 MS. REILLY: No, your Honor.

11 THE COURT: Is there an obligation that the bank be
12 federally insured or has that issue been resolved?

13 MS. REILLY: Your Honor, I don't think that's an issue
14 for this charge.

15 THE COURT: Would you please summarize briefly what
16 types of evidence would be introduced if this case were to
17 proceed to trial.

18 MS. REILLY: Certainly, your Honor. If we were to
19 proceed to trial the government expects that it would call
20 witnesses to testify, including lay witnesses, victims, and
21 coconspirators involved in the conspiracy charged in Count One,
22 as well as law enforcement witnesses who would testify to the
23 flow of funds that resulted from the conspiracy. The
24 government also expects it would introduce documentary records,
25 including purported legal documents and bank records that were

1 used in furtherance of the conspiracy.

2 THE COURT: Mr. Lisi, were you able to hear the
3 prosecutor a moment ago?

4 THE DEFENDANT: Yes, your Honor, for the most part.
5 It kind of went out in the end, the last part.

6 THE COURT: I believe she was indicating that the
7 evidence at trial would include lay witnesses, coconspirators,
8 documentary evidence, and evidence showing the flow of money
9 between accounts, and evidence demonstrating the falsity of
10 certain of the statements among other things. Do you
11 understand that's the evidence that would be introduced at the
12 trial?

13 THE DEFENDANT: Yes, your Honor. Thank you.

14 THE COURT: Ms. Scolari, do you agree that there is a
15 sufficient factual predicate for the guilty plea?

16 MS. SCOLARI: I do, your Honor.

17 THE COURT: Is there any reason why I should not
18 accept it this morning?

19 MS. SCOLARI: No, your Honor.

20 THE COURT: Ms. Reilly, do you agree that there is a
21 sufficient factual predicate for a guilty plea?

22 MS. REILLY: I do, your Honor.

23 THE COURT: Is there any reason why I should not
24 accept it?

25 MS. REILLY: No.

1 THE COURT: Mr. Lisi, at this time do you wish to
2 enter a plea of guilty to Count One of the indictment?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Sir, because you've acknowledged that you
5 are in fact guilty as charged in Count One, because I'm
6 satisfied that you know of your rights, including your right to
7 go to trial, and that you're aware of the consequences of a
8 guilty plea, including the penalties that may be imposed, and
9 because I find that you are knowingly and voluntarily pleading
10 guilty, I'm accepting your guilty plea, I will enter a judgment
11 of guilty on Count One of the indictment.

12 Now, Ms. Scolari, how do we think the probation office
13 is going to be -- will they undertake an interview by phone?

14 MS. SCOLARI: There are several possibilities. They
15 could actually travel to Fort Dix. I don't know if the budget
16 or their offices provide for that. I think they can do an
17 interview by phone, if we can set it up with the facility.
18 Normally these interviews take about two hours, and I don't
19 know if we can set up a legal call. But perhaps, if we need
20 to, we can ask for the Court to intervene.

21 The other possibility, although I don't know if they
22 will do that in this case, is, sometimes they ask the
23 jurisdiction where Mr. Lisi is to do the interview. That would
24 be somebody apart from the person that would write up the
25 report. The two pieces would be put together by the probation

1 officer and the Southern District.

2 THE COURT: Ms. Scolari, would you want to be present,
3 at least by telephone, for any interview?

4 MS. SCOLARI: Yes, I would like to be present. Thank
5 you.

6 THE COURT: Mr. Lisi, as has been suggested by the
7 questions I was just discussing with Ms. Scolari, the next step
8 in this process will be preparation for sentencing, and the
9 probation office will want to interview you in connection with
10 the presentence investigation report that it will prepare. And
11 I will order that the interview not take place unless
12 Ms. Scolari is present either in person or by phone for that
13 interview, and we will work with the probation office to find
14 the best way of obtaining the information they need for their
15 report from you, whether that be an in-person visit, telephone
16 or something else. We will make sure that they understand your
17 situation so that they can work with you and with your attorney
18 in the best way to get the information that is needed.

19 Sir, my only thought to you on this front, and
20 certainly you are going to get your legal advice from
21 Ms. Scolari, but I would just ask that to the extent that you
22 speak with the probation office, please see that what you tell
23 them is as accurate and complete as it can be. I say that
24 simply because the presentence investigation report is
25 something I rely on very heavily at sentencing. So that report

1 is most useful to me when it is complete and accurate. And you
2 will have an opportunity before I see the report to review it
3 with Ms. Scolari, and if there are things that you'd like
4 corrected or modified or objected to, you'll have an
5 opportunity to do that before I get the report so that I will
6 have everyone's complete views about the information that is
7 contained in the report.

8 Mr. Lopez, may I please have a sentencing date.

9 THE DEPUTY CLERK: Yes, your Honor.

10 MS. SCOLARI: I'm sorry for interrupting. Your Honor,
11 it occurred to me that since Mr. Lisi has been incarcerated,
12 since his last report, the probation officer may not
13 reinterview him, but I would ask that the Court require them to
14 do so because there have been multiple changes in
15 circumstances, despite the fact that he's been incarcerated.
16 His health, his mother's health, and I think other issues that
17 are pertinent. Perhaps if we need the Court to direct a
18 reinterview, even if it's by phone, I would appreciate it.

19 THE COURT: Certainly. I think you will actually be
20 speaking with the probation office in the first instance. If
21 you get any pushback, let me know who I need to speak to. And
22 I understand the reasons why you want to have a reinterview,
23 and I think that is appropriate here.

24 MS. SCOLARI: Thank you.

25 THE COURT: Given that, Ms. Scolari, is the typical

1 100 days enough time or should we go out a little further?

2 MS. SCOLARI: Your Honor, I don't know how much time
3 probation would need to do the report. I guess what I would
4 say, since Mr. Lisi is serving a sentence, that we would prefer
5 to keep it within the normal range, subject to a request for
6 more time if we feel we need it.

7 THE COURT: That's what I was thinking as well.

8 Mr. Lopez, may I have a date, please.

9 THE DEPUTY CLERK: Yes, your Honor. Wednesday, July
10 19, at 3 p.m.

11 THE COURT: Ms. Reilly, may I ask you, please, to get
12 the factual statement to the probation office in the next week
13 or so.

14 MS. REILLY: Yes, your Honor.

15 THE COURT: Ms. Scolari, could you please begin the
16 process of arranging for Mr. Lisi's interview in the next two
17 weeks or so.

18 MS. SCOLARI: Yes, your Honor.

19 THE COURT: And based on my individual rules of
20 practice, I would ask for the defense sentencing submission two
21 weeks in advance of sentencing and the government's responsive
22 submission one week in advance of sentencing. Please let me
23 know if there are any problems meeting that.

24 Ms. Scolari, perhaps this is something you may want to
25 speak about with your client, but would you anticipate that the

1 sentencing would be by video conference as well?

2 MS. SCOLARI: That is likely, but I would like to
3 discuss it with Mr. Lisi.

4 THE COURT: Of course. Any number of developments can
5 happen between now and then. But I would like you to let me
6 know closer to the date.

7 MS. SCOLARI: Yes.

8 THE COURT: Ms. Reilly, is there anything else you
9 would like to address this morning with me?

10 MS. REILLY: Nothing further from the government, your
11 Honor.

12 THE COURT: Ms. Scolari, anything else this morning?

13 MS. SCOLARI: No. Thank you, your Honor.

14 THE COURT: Mr. Lisi, thank you very much. We will be
15 talking to you in the next couple of weeks.

16 THE DEFENDANT: Thank you, your Honor.

17 THE COURT: We are done. Thank you.

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